

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 00-0184

Use Tax

For Tax Years 1997 through 1998

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Use Tax—Rental and Purchase of Tangible Personal Property

Authority: IC 6-8.1-5-1; 45 IAC 2.2-3-4; 45 IAC 2.2-4-27

Taxpayer protests imposition of sales and use tax on the rental and purchase of tangible personal property.

STATEMENT OF FACTS

Taxpayer manufactures parts for industrial use. As the result of a sales tax audit, the Indiana Department of Revenue ("Department") issued proposed assessments on certain purchases and rentals for 1997 and 1998. Taxpayer protests some of the assessments. Further facts will be provided as required.

I. Use Tax— Rental and Purchase of Tangible Personal Property

DISCUSSION

Taxpayer protests the imposition of Use Tax on various items it purchased or rented during the audit period. With regard to the rented items, the Department referred to 45 IAC 2.2-4-27(c), which states:

In general, the gross receipts from renting or leasing tangible personal property are subject to tax. The rental or leasing of tangible personal property constitutes a retail transaction, and every lessor is a retail merchant with respect to such transactions. The lessor must collect and remit the gross retail tax or use tax on the amount of actual receipts as agent for the state of Indiana. The tax is borne by the lessee, except when the lessee is otherwise exempt from taxation.

For the purchased items, the Department refers to 45 IAC 2.2-3-4, which states:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

Taxpayer offers several arguments to explain why it believes that some items should not be subject to use tax. Taxpayer asserts that several items are used in the production process, several items are safety equipment, and that several items are purchased for resale and are therefore not subject to tax.

Taxpayer has provided no documentation to support its position. The Department refers to IC 6-8.1-5-1(b), which states in relevant part:

The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

At hearing, taxpayer was informed that documentation was necessary to rebut the presumption that the Department's assessment based on a comprehensive audit of taxpayer's entire process is correct. Taxpayer did send in some photographs of items in its plant, without explanatory materials. These photographs do not speak for themselves and are insufficient to support taxpayer's position. Therefore, taxpayer has not met the burden imposed by IC 6-8.1-5-1(b).

FINDING

Taxpayer's protest is denied.

WL/JM/MR 022706